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HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6 FAMILY AND ADULT SERVICES DIVISION

CHAPTER 683

UNDERPAYMENT, OVERPAYMENT, AND RECOVERY

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Historical Note: This chapter is based substantially upon chapter 17-721 [Eff 7/19/82; am 10/2/82; am 7/5/83; am 7/22/83; am 1/19/84; am 7/23/84; am 11/29/85; am 12/27/86; am 8/31/87; am 7/24/89; am 8/25/90; am 12/24/90; R 3/19/93] chapter 17-723 [Eff 7/19/82; am 7/5/83; am 10/3/83; am 1/19/84; am 12/27/86; am 4/28/88; am 8/25/90; am 12/24/90; R 3/19/93] chapter 17-753, subchapter 4 [Eff 12/21/84; R 6/29/92] §17-626-17 [Eff 7/19/82; am 12/5/83; am 4/20/85; am 6/12/90; am 10/4/90; R 3/19/93] §17-626-17.1 [Eff 4/20/85; am 10/4/90; R 3/19/93] §17-626-18 [Eff 7/19/82; am 6/6/83; R 3/19/93]

SUBCHAPTER 1

OVERVIEW

§17-683-1 Purpose. This chapter provides the guidelines for determining and processing underpayments, overpayments, and recovery actions. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §§273.17, 273.18; 45 C.F.R. §233.20; HRS §§346-35, 346-44)

§17-683-2 Definitions. As used in this chapter:

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"Administrative error" means an error attributable to the department staff such as calculating, clerical, procedural, typing, misapplication of policy, failure to take action, or using the wrong benefit amount table.

"Administrative error claim" means a food stamp claim established against households for an overpayment which was caused by department action or failure to take action; or, in the case of categorical eligibility, an action by an agency of the State which resulted in the household's improper eligibility for AFDC provided a claim can be calculated based on a change in net income or household size, or both.

"Assistance unit" means persons whose needs, income, and assets are considered in determining eligibility for and the amount of financial assistance payment.

"Budget month" means the calendar month from which the department shall use income to compute the amount of benefit issued.

"Claim determination" means a decision made by the branch regarding the basis, the amount, and liability, if warranted, for the overpayment of food stamps.

"Inadvertent household error claim" means a food stamp claim established against households for overpayments caused by:

- (1) a misunderstanding or unintended error on the part of the household;
- (2) a misunderstanding or unintended error on the part of a categorically eligible household provided a claim can be calculated based on a change in net income or household size, or both; or
- (3) social security administration action of failure to take action which resulted in the household's categorical eligibility provided

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a claim can be calculated based on a change in net income or household size, or both.

"Initial allotment" means the total value of food stamp coupons a household is authorized to receive from the month of application up to the month the branch authorizes the benefits.

"Misunderstanding of the program with no intent to defraud" is a situation where the participant did not understand the program provisions or where the participant's lack of education or language skills was a factor in improper reporting of eligibility factors.

"Offsetting" means the process of reducing the amount of benefits to be restored to satisfy an outstanding overpayment against the household.

"Overpayment" means the amount of benefits issued to a household in excess of the amount it was actually entitled to receive by regulation.

"Payment month" means the calendar month for which the department shall provide benefits.

"Program loss" means coupons issued to or obtained by a household to which the household was not entitled.

"Retroactive payment" means the food stamp benefit issued to a household for the month in which an application is filed when the determination of eligibility is made in a subsequent month on either a timely or untimely basis.

"Report month" means the calendar month following the budget month.

"Restored benefits" means the food stamp benefit issued to a household whenever benefits for a prior period were not given or were lost because of an error by the branch.

"Underpayment" means the amount of benefits which is less by any sum the amount of benefits which the household was entitled to receive for the month. [Eff 3/19/93; am 9/26/97; am 01/22/02] (Auth: HRS §346-14) (Imp: 7 C.F.R. §§273.18(a), 271.2; 45 C.F.R. §233.20)

SUBCHAPTER 2

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FINANCIAL ASSISTANCE UNDERPAYMENTS

§17-683-3 Underpayments. (a) Prompt action shall be taken to correct any underpayments to currently eligible assistance units and to assistance units which would have been eligible if an error had not occurred.

(b) If an assistance unit has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment.

(c) Payments provided to the assistance unit to correct the underpayment shall not be counted as income or asset in determining continued eligibility and the amount of assistance in the month the corrective payment is made and the following month.

(d) Corrective payments shall be made for any underpayment due a former recipient when financial assistance is restored.

(e) The rules specified in this section are effective for underpayments which are identified subsequent to:

- (1) September 30, 1981, for the federally funded categories of assistance, regardless of when the underpayment occurred; and
- (2) July 18, 1982, for the state funded categories of assistance, regardless of when the underpayment occurred. [Eff 3/19/93; am 7/16/99] (Auth: HRS §346-14) (Imp: 45 C.F.R. §233.20)

§§17-683-4 to 17-683-8 (Reserved).

SUBCHAPTER 3

FOOD STAMP UNDERPAYMENTS

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§17-683-9 Accounting. (a) Each branch shall be responsible for maintaining an accounting system for documenting a household's entitlement to restoration of lost benefits and for recording the balance of lost benefits that shall be restored to the household.

(b) Each branch shall at a minimum, document how the amount to be restored was calculated and the reason lost benefits shall be restored. The accounting system shall be designed to readily identify those situations where a claim against a household shall be used to offset the amount to be restored. [Eff 3/19/93]
(Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(h))

§17-683-10 Entitlement. (a) The branch shall restore to the household benefits which were lost whenever the loss was caused by an error by the department or when the regulations specifically state the household is entitled to restoration of lost benefits. The household shall be entitled to a restoration if a fraud disqualification was reversed as specified in section 17-683-17. With the exception of benefits which are restored as a result of a reversal of a fraud disqualification penalty, benefits shall not be restored if the benefits are lost more than twelve months prior to the most recent of the following:

- (1) The month the branch was notified by the household or by another person or agency in writing or orally of the possible loss to that specific household;
- (2) The month the branch discovers in the course of business that a loss to a specific household has occurred; or
- (3) The date the household requested a hearing to contest the adverse action which resulted in the loss.

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(b) Benefits shall be restored even if the household is currently ineligible. [Eff 3/19/93]
(Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(a))

§17-683-11 Required branch action. Once entitlement to restoration of lost benefits has been determined by the branch, action shall be automatically taken to restore any benefits that were lost. The branch shall notify the household of:

- (1) Its entitlement to receive lost benefits;
- (2) The amount to be restored;
- (3) Any offsetting that was done;
- (4) The method of restoration; and
- (5) The right to appeal through the hearing process if the household disagrees with any aspect of the proposed lost benefit restoration. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(b))

§17-683-12 Disputed benefits. (a) If the household does not agree with the amount to be restored as calculated by the branch or with any other action taken by the branch to restore lost benefits, the household may request a fair hearing within ninety days of the date the household is notified of its entitlement to restoration of lost benefits.

(b) If a fair hearing is requested prior to or during the time lost benefits are being restored, the household shall receive the lost benefits as determined by the branch pending the results of the fair hearing.

(c) If the fair hearing decision is favorable to the household, the branch shall restore the lost benefits in accordance with that decision.

(d) If a household believes it is entitled to restoration of lost benefits but the branch, after reviewing the case file, disagrees, the household shall have ninety days from the date of branch determination to request a fair hearing.

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(e) The branch shall restore lost benefits to the household only if the fair hearing decision is favorable to the household.

(f) Benefits lost more than twelve months prior to the date the branch was initially informed of the household's possible entitlement to lost benefits shall not be restored. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(c))

§17-683-13 Computing the amount to be restored.
After correcting the loss for future months and excluding those months for which benefits may have been lost prior to the twelve month time limit described in section 17-683-10, the branch shall calculate the amount to be restored as follows:

- (1) If the error resulted in an incorrect allotment when the household was eligible, the loss of benefits shall be calculated only for the months in which the household participated. The amount to be restored shall be the difference between the allotment the household received and the correct allotment the household should have received; or
- (2) If the loss was caused by an incorrect delay, denial, or termination of benefits, the months affected by the loss shall be calculated as follows:
 - (A) If an eligible household's application was erroneously denied, the month the loss initially occurred shall be the month of application, or for an eligible household filing a timely reapplication, the month following the expiration of its certification period shall be the month the loss initially occurred; or
 - (B) If an eligible household's application was delayed, the months for which benefits may be lost shall be calculated

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in accordance with procedures specified in chapter 17-647 for determining whether the delay was caused by the household or by the branch; or

- (3) If a household's benefits were erroneously terminated, the month the loss initially occurred shall be the first month benefits were not received as a result of the erroneous action; and
- (4) After computing the date the loss initially occurred, the loss shall be calculated for each month subsequent to that date until either the first month the error is corrected or until the first month the household is found ineligible. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(d))

§17-683-14 Determination and calculation of benefits. (a) For each month affected by the loss, the branch shall determine if the household was actually eligible. If eligibility cannot be determined by using the household's case file, the branch shall advise the household of what information must be provided to determine eligibility for these months. The household shall be considered ineligible for any month for which eligibility cannot be established.

(b) For the months the household was eligible, the branch shall calculate the allotment the household should have received. The difference between the actual allotment received, if any, and the correct allotment shall be the amount to be restored.

(c) If a claim against a household is unpaid or is held in suspense, the amount to be restored shall be offset against the amount due on the claim before the balance, if any, is restored to the household. At the time when the household is certified and receives an initial allotment, the initial allotment shall not be reduced to offset claims, even if the initial allotment

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is paid retroactively. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(d))

§17-683-15 Method of payment. (a) Regardless of whether a household is currently eligible or ineligible, the branch shall restore lost benefits to a household by issuing an allotment equal to the amount of benefits that were lost. The amount restored shall be issued in addition to the allotment currently eligible households are entitled to receive.

(b) The branch shall honor reasonable requests by a household to restore lost benefits in monthly installments if, for example, the household fears the excess coupons may be lost or stolen or the lost amount is more than the household may use in a reasonable period of time. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(f))

§17-683-16 Household composition changes. Whenever lost benefits are due a household and the household's membership has changed, the branch shall restore the lost benefits to the household in which the members are a majority of the individuals who were household members at the time the loss occurred. If the branch cannot locate or determine the household which contains a majority of the household members the branch shall restore the lost benefits to the household in which the individual who was head of the household at the time the loss occurred resides. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(g))

§17-683-17 Restoring of benefits to individuals disqualified for intentional program violation. (a) Individuals disqualified for fraud shall be entitled to restoration of any benefits lost during the months the individuals were disqualified, not to exceed twelve months prior to the date of branch notification, if the

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decision which resulted in disqualification is subsequently overturned or reversed by the court. For example, an individual would not be entitled to restoration of lost benefits for the period of disqualification based solely on the fact that a criminal conviction could not be obtained unless the individual successfully challenged the disqualification period imposed by an administrative disqualification in a separate court action.

(b) For each month the individual was disqualified, not to exceed twelve months prior to branch notification, the amount to be restored, if any, shall be determined by comparing the allotment the household received with the allotment the household would have received had the disqualified member been allowed to participate. If the household received a smaller allotment than it should have received, the difference shall be equal to the amount to be restored. Participation in an administrative disqualification hearing in which the household contests the branch assertion of intentional program violation shall be considered notification that the household is requesting restored benefits. [Eff 3/19/93; am 2/07/94] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.17(e))

§§17-683-18 to 17-683-22 (Reserved).

SUBCHAPTER 4

FINANCIAL ASSISTANCE OVERPAYMENTS AND RECOVERY

§17-683-23 Overpayments. (a) An overpayment made to individuals of an assistance unit receiving financial assistance, including overpayment resulting from aid paid pending hearing decisions, shall be recovered by reducing the amount of any future financial assistance payable to the individuals of the overpaid assistance unit including non-needy caretakers.

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- (1) Any cash refunds shall be collected and computed in the total overpayment;
- (2) The amount of the monthly financial assistance payment payable to the assistance unit shall be reduced by ten per cent of the family's standard of assistance to recover the overpayment;
- (3) The amount of financial assistance payable to an assistance unit from the initial month of application through the month the financial assistance payment is approved shall be reduced in accordance with paragraph (2). The financial assistance payable for the initial month of eligibility shall not be reduced when the financial assistance payment is prorated.

(b) An overpayment made to individuals of an assistance unit receiving financial assistance, including overpayment resulting from aid paid pending hearing decisions, shall be recovered by appropriate action under state law against the income and assets of any individual member of the overpaid financial assistance unit including non-needy caretakers. When these individuals do not continue to receive assistance:

- (1) The department may send periodic bills requesting payment from the individuals;
- (2) Any cash refunds shall be collected and computed in the total overpayment;
- (3) Any overpayment shall be recovered through recoupment from the financial assistance grant when the individual of the assistance unit, including the non-needy caretaker, reapplies and is approved for assistance.

(c) The department shall stop assistance for the corresponding payment month when the:

- (1) Family was ineligible for financial assistance in the budget month;
- (2) Department becomes aware of the ineligibility when the monthly eligibility report is submitted;
- (3) Family accurately reported the budget month's income and other circumstances; and

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- (4) Family will be eligible for the following payment month.
- (d) If an individual, including a non-needy caretaker leaves the assistance unit which was overpaid, recovery of the overpayment shall be from:
 - (1) The financial assistance grant of the assistance unit which was overpaid;
 - (2) Any assistance unit of which the individual has subsequently become a member; or
 - (3) Any individual of the overpaid assistance unit, including the non-needy caretaker, whether or not currently a recipient.
- (e) If, by reason of recovery of an overpayment, financial assistance payable to the assistance unit for the month is reduced to zero, the assistance unit shall still be considered recipients.
- (f) If an assistance unit has both an overpayment and an underpayment, the overpayment and underpayment shall be offset one against the other in correcting the payment.
- (g) When financial assistance is restored to a former recipient including the non-needy caretaker with an outstanding overpayment, the overpayment shall be recovered.
- (h) When an overpayment has been made to an alien, during the three years after the alien's entry into the United States, due to the sponsor's failure to provide correct information, the sponsor and alien shall be held jointly liable for the overpayment. For such overpayments, the provisions of this section shall be applied. The sponsor shall not be held liable for the overpayment and recovery shall not be made from the sponsor when a sponsor is found to have good cause or be without fault for not providing correct information to the department. Good cause or without fault shall be limited to the following situations:
 - (1) Incorrect application of state policy by the department;
 - (2) The alien's sponsor's whereabouts were not known to the alien;
 - (3) The alien provided incorrect information regarding the sponsor's income and assets; or

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- (4) The alien sponsor was unable to provide accurate information regarding assets and income because of a mental disorder.
- (i) Individuals subject to recovery of overpayment shall be provided written notice by the department stating:
 - (1) The reasons, dates, and the amount of the alleged overpayment;
 - (2) Proposed amount to be repaid each month;
 - (3) Period over which the proposed repayment shall be made;
 - (4) Method by which the proposed overpayment shall be recovered; and
 - (5) The right to request a fair hearing if the individual disagrees with the department's proposed action.
- (j) If fraud is suspected in any overpayment situation, the department shall also pursue the investigation of suspected fraud.
- (k) Subsections (a) to (i) are effective for overpayments which are identified subsequent to:
 - (1) September 30, 1981, for the federally funded categories of assistance regardless of when the overpayment occurred; and
 - (2) July 18, 1982, for the state funded categories of assistance, regardless of when the overpayment occurred.
- (1) Effective March 1, 1990, the department shall suspend recovery of overpayments through the reduction of the monthly assistance payment as stated in subsection (a)(1) for the state funded GA and AABD programs when the individual:
 - (1) Enters or resides in a domiciliary care facility; or
 - (2) Receives a state loan as specified in chapter 17-681. [Eff 03/19/93; am 3/14/94; am 9/26/97; am 7/16/99; am 01/22/02] (Auth: HRS §346-44) (Imp: 45 C.F.R. §233.20; HRS §§346-35, 346-44)

§17-683-24 Overpayment recovery activities on closed cases. (a) Recovery of overpayments from individuals who are no longer receiving financial

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assistance shall be made by appropriate action under state law against the income and assets of any individual member of the overpaid assistance unit who was included in the financial assistance grant to include non-needy caretakers.

(b) The department may send periodic bills requesting payment for overpayments from individuals no longer receiving financial assistance.

(c) In locating former recipients with overpayments, the department shall use appropriate data sources such as state automobile registration, state unemployment insurance files, and the social security administration's benefit data exchange (BENDIX).

(d) When the department determines that reasonable efforts have been made to recover an overpayment and it is no longer cost effective to continue collection activities, the department may discontinue efforts to recover the overpayment. Reasonable efforts must include notification of the amount of and reason for the overpayment and that repayment is required.

(e) Recovery activities shall not be suspended or waived by the department in cases involving fraud, or where the court has ordered an individual to repay overpayments to the department.

(f) Any overpayment shall be recovered by reducing the amount of financial assistance when the overpaid individual or a member of the overpaid unit reapplies and is approved for financial assistance.

[Eff 03/19/93; am 3/14/94; am 9/26/97; am 7/16/99]

(Auth: HRS §§346-14, 346-44; 45 C.F.R. §233.20) (Imp: HRS §346-44; 45 C.F.R. §233.20)

§17-683-25 Suspending recovery of financial program overpayments. (a) The department may suspend collection action at any time if it has documentation that the household cannot be located.

(b) Collection action against a nonparticipating household may be suspended when the cost of further collection action is likely to exceed the amount that can be recovered. [Eff 9/26/97] (Auth: HRS §346-14; 42 U.S.C. 1305) (Imp: Pub. L. No. 104-93 (1996))

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§17-683-26 Terminating recovery of overpayments.
A claim shall be determined uncollectible after it is held in suspense for three years at which time the claim shall be considered a terminated claim. [Eff 9/26/97] (Auth: HRS §346-14; 42 U.S.C. 1305) (Imp: Pub. L. No. 104-93 (1996))

§§17-683-27 to 17-683-29 (Reserved).

SUBCHAPTER 5

MEDICAL ASSISTANCE OVERPAYMENTS AND RECOVERY

§17-683-30 REPEALED. [R 8/01/94]

§17-683-31 REPEALED. [R 8/01/94]

§17-683-32 REPEALED. [R 8/01/94]

§17-683-33 REPEALED. [R 8/01/94]

§§17-683-34 to 17-683-39 (Reserved).

SUBCHAPTER 6

FOOD STAMP OVERPAYMENTS AND RECOVERY

§17-683-40 Establishing claims against households. (a) All adult household members shall be jointly and severally liable for the value of any food stamp overpayments to the household. Each branch shall establish a claim against any food stamp household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.

(b) A claim shall be handled as an inadvertent household error claim if the overpayment was caused by:

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- (1) A misunderstanding or unintended error on the part of the household;
- (2) A misunderstanding or unintended error on the part of a categorically eligible household provided a claim can be calculated based on a change in net income or household size or both; or
- (3) The failure of the Social Security Administration to take action which resulted in the household's categorical eligibility provided a claim can be calculated based on a change in net income or household size or both.

(c) A claim shall be handled as an administrative error claim if the overpayment was caused by branch action or failure to take action or, in the case of categorical eligibility, an action by a state agency which resulted in the household's improper eligibility for AFDC provided a claim can be calculated based on a change in net income and household size or both.

(d) A claim shall be handled as an intentional program violation claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed intention program violation as defined in chapter 17-604.1 or an individual is disqualified as a result of signing either a waiver of their disqualification hearing or a disqualification consent agreement in cases referred for prosecution. Prior to the determination of intentional program violation or the signing of either a waiver of right to a disqualification hearing or a disqualification consent agreement in cases of deferred acceptance, the claim shall be handled as an inadvertent household error claim. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(a))

§17-683-41 Criteria for establishing an inadvertent household error and administrative error claims. (a) The branch shall take action to establish a claim against any household that received an overpayment due to an inadvertent household or administrative error if the criteria specified in this

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section have been met. The branch shall take action on those claims for which sixty months or less have elapsed between the month an overpayment occurred and the month the branch discovered a specific case involving an overpayment.

(b) Instances of inadvertent household error which may result in a claim include, but are not limited to, the following:

- (1) The household unintentionally failed to provide the branch with correct or complete information;
- (2) The household unintentionally failed to report to the branch changes in its household circumstances;
- (3) The household unintentionally received benefits or more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits;
- (4) The household was receiving food stamps solely because of categorical eligibility and the household was subsequently determined ineligible for the AFDC or SSI, or both at the time the household received the benefits; or
- (5) The Social Security Administration took an action or failed to take the appropriate action, which resulted in the household improperly receiving SSI benefits.

(c) Instances of administrative error which may result in a claim include, but are not limited to, the following:

- (1) Branch failed to take prompt action on a change reported by the household;
- (2) Branch incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;
- (3) Branch incorrectly issued duplicate ATP's to a household which were subsequently transacted;
- (4) Branch continued to provide a household food stamp allotments after its certification

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- period had expired without benefit of a reapplication determination;
- (5) Branch failed to provide a household a reduced level of food stamp benefits because its public assistance grant changed; or
 - (6) An agency of the State took an action or failed to take an appropriate action, which resulted in the household improperly receiving the AFDC benefits.
- (d) Neither an administrative error claim nor an inadvertent household error claim shall be established if an overpayment occurred as a result of the following:
- (1) The branch failed to insure that a household fulfilled the following procedural requirements:
 - (A) Signed the application form;
 - (B) Completed a current work registration form; or
 - (C) Was certified in the correct project area.
 - (2) The household transacted an expired ATP, unless the household altered its ATP. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(b)(1), (2), and (3))

§17-683-42 Calculating the amount of the inadvertent household error and administrative error overpayments. (a) After excluding the months that are more than sixty months prior to the date the overpayment was discovered, the branch shall determine the correct amount of food stamp benefits the household was entitled to receive while the overpayment was in effect. In cases involving reported changes, the branch shall determine the month the overpayment initially occurred as follows:

- (1) If, due to an inadvertent error on the part of the household, the household failed to report a change in its household circumstances within ten days of the date the change became known to the household, or on the next monthly report form, the first month affected by the household's failure to report

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shall be the first month in which the change would have been effective had it been timely reported. However, in no event shall the branch determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred;

- (2) If the household timely reported a change, but the branch did not act on the change within ten days of the date the change was reported by the household to the branch, the first month affected by the branch's failure to act shall be the first month the branch would have made the change effective had it timely acted. However, in no event shall the branch determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred. If a notice of adverse action was required but was not provided, the branch shall assume for the purposes of calculating the claim that the household would not have requested a fair hearing within the ten-day requirement period.

(b) If the household received a larger allotment than it was entitled to receive, the branch shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. When determining the amount of benefits the household should have received, the branch shall not apply the twenty per cent earned income deduction to that portion of earned income which the household failed to report in a timely manner.

(c) For categorically eligible households, a claim will only be determined when it can be computed on the basis of a change in the household's net income or household size, or both. A claim shall not be established if the reason for the household's ineligibility for its AFDC or SSI benefits is due to the household exceeding the allowable resource retention limits for the respective programs.

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(d) After calculating the amount of the inadvertent household error and administrative error claim, the branch shall offset the amount of the claim against any amount which has not yet been restored to the household. The branch shall then initiate collection action for the remaining balance, if any.
[Eff 3/19/93; am 10/28/96] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(c)(1); Pub. L. No. 104-193 (1996))

§17-683-43 Calculating the amount of intentional program violation overpayments. (a) For each month that a household received an overpayment due to an act of intentional program violation, the branch shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the intentional program violation claim shall be calculated back to the month the act of intentional program violation occurred, regardless of the length of time that elapsed until the determination of intentional program violation was made. However, the branch shall not include in its calculation any amount of the overpayment which occurred in a month more than sixty months from the date the overpayment was discovered. If the household member is determined to have committed intentional program violation by intentionally failing to report a change in its household's circumstances, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been reported. However, in no event shall the branch determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

(b) If the household received a larger allotment than it was entitled to receive, the branch shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. When determining the amount of benefits the household should have received, the branch shall not apply the twenty per cent earned income deduction to that portion

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of earned income which the household intentionally failed to report.

(c) Once the amount of the intentional program violation claim is established, the branch shall offset the overpayment against any underpayment that has not yet been restored. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(c)(2))

§17-683-44 Criteria for initiating recovery action on inadvertent household and administrative error overpayments. (a) A branch shall initiate collection action against the household on all inadvertent household or administrative error claims unless the claim is collected through offset, or the branch has documentation which shows that the household cannot be located.

(b) The branch may postpone collection action on inadvertent household error claims in cases where an overpayment is being referred for possible prosecution or for administrative disqualification, and the investigations office determines that collection action will prejudice the case. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(d)(1))

§17-683-45 Criteria for initiating recovery action on intentional program violation overpayments. (a) If a household member is found to have committed an intentional program violation by an administrative disqualification hearing official or a court of appropriate jurisdiction or has signed either a waiver or a consent agreement as specified in chapter 17-604.1, the department shall initiate collection action against the individual's household. In addition, a personal contact with the household shall be made, if possible. The branch shall initiate collection unless:

- (1) The household has repaid the overpayment;
- (2) The department has documentation which shows the household cannot be located; or
- (3) The department determines collection action will prejudice the case against a household member referred for prosecution.

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(b) The department shall initiate collection action for an unpaid or partially paid claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. In cases where a household member was found guilty of misrepresentation or fraud by a court or signed a disqualification consent agreement in cases referred for prosecution, the department shall request that the matter of restitution be brought before the court or addressed in the agreement reached between the prosecuting attorney and the accused individual. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(d)(2))

§17-683-46 Initiating recovery on overpayments.

(a) The branch shall initiate collection action by providing the household a written demand letter which informs the household of:

- (1) The amount owed;
- (2) The reason for the overpayment;
- (3) The period of time the overpayment covers;
- (4) Any offsetting that was done to reduce the overpayment;
- (5) How the household may pay the claim;
- (6) The household's right to a fair hearing if the household disagrees with the amount of the claim, unless the household has already had a fair hearing on the amount of the claim as a result of the consolidation of the administrative disqualification hearing with the fair hearing;
- (7) The availability of an individual or organization that provides free legal representation, provided the service is available;
- (8) The length of time the household has to decide which method of repayment it will choose and inform the branch of its decision and of the fact that the household allotment will be reduced as provided in section 17-683-47(a) and (b) if the household fails to agree to make restitution for inadvertent

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household error and intentional program violation overpayments;

- (9) The requirement that if the household timely elects allotment reduction, such a reduction shall begin with the first allotment issued after such election for inadvertent household error claims as provided in section 17-649-9(15).
 - (10) The availability of allotment reduction as a method of repayment if the household prefers this method, for administrative error claims; and
 - (11) The right to request renegotiation of any repayment schedule to which the household has agreed in accordance with this chapter should the household's economic circumstances change. The demand letter shall provide space for the household to indicate the method of repayment and a signature block.
- (b) For inadvertent household error claims, a demand letter provided to a participating household subsequent to a fair hearing which sustains the claim shall inform the household:
- (1) That unless the household elects a method of repayment and informs the department of its election within the time specified in section 17-683-47, its allotment will be reduced;
 - (2) How allotment reduction will affect household benefits if the department has not otherwise informed the household about this matter;
 - (3) That if the household timely elects allotment reduction, such reduction will begin with the first allotment issued after such election as provided in section 17-649-9(15); and
 - (4) That if the household fails to make a timely election, the reduction will begin with the first allotment issued after timely notice of such election is due to the department, as provided in section 17-683-47(a). [Eff 3/19/93; am 12/9/94] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(d)(3))

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§17-683-47 Action against households which fail to respond. (a) If the household against which collection action has been initiated for repayment of an inadvertent household error is currently participating in the program and does not respond to the written demand letter within twenty days of the date the notice is mailed, the branch shall reduce the household's food stamp allotment. Allotment reduction shall be made effective no later than the month following the month in which the twenty day period has expired, except where the household has filed for a hearing in response to the demand letter and is receiving continued benefits pending the hearing decision.

(b) Participating households which are liable for intentional program violation claims shall elect a method of repayment on the date of receipt of the demand letter (or if the date of receipt is not a business day, on the next business day) or be deemed to have elected allotment reduction. The deadline for receipt of election shall not exceed ten days from the date the demand letter is mailed.

(c) If any household against which collection action has been initiated for repayment of an administrative error claim does not respond to the first demand letter, additional demand letters shall be sent at intervals of thirty days until:

- (1) The household has responded by paying or agreeing to pay the claim;
- (2) The criteria for suspending collection action, as specified in this chapter have been met; or
- (3) The department initiates other collection actions.

(d) The department may also pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any inadvertent household error or administrative error.

(e) At each certification, the department shall identify households that owe outstanding payments on a previously established inadvertent household error or administrative error claim and shall initiate appropriate recovery action in accordance with the provisions

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in this chapter. [Eff 3/19/93; am 12/9/94; am 10/13/95] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(d)(1), (3), and (4))

§17-683-48 Suspending recovery of inadvertent household and administrative error overpayments. (a) An inadvertent household or administrative error overpayment shall be suspended if no recovery action was initiated because of conditions specified in section 17-683-44.

(b) If recovery action was initiated, and at least one demand letter has been sent, further recovery action of an inadvertent household error overpayment against a nonparticipating household or of any administrative error overpayment shall be suspended when the:

- (1) Household cannot be located; or
- (2) Cost of further recovery action is likely to exceed the amount that may be recovered.

(c) When a household files for bankruptcy, all collection action, including recoupments, shall be suspended at any time, pending the outcome of such court proceedings. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(e)(1))

§17-683-49 Suspending recovery of intentional program violation overpayments. (a) The department may suspend collection action on intentional program violation claims at any time if it has documentation that the household cannot be located.

(b) Collection action of any intentional program violation claim against a nonparticipating household may be suspended when the cost of further collection action is likely to exceed the amount that can be recovered and the department has met the following criteria:

- (1) The department has sent at least one demand letter for claims under \$100;
- (2) The department has sent at least two demand letters for claims between \$100 and \$400; or
- (3) The department has sent at least three demand letters for claims of more than \$400.

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(c) When a household files for bankruptcy, all collection action, including recoupments, shall be suspended at any time pending the outcome of the court proceedings. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(e)(2))

§17-683-50 Terminating recovery of overpayments.

(a) A claim shall be determined uncollectible after it is held in suspense for three years at which time the claim shall be considered a terminated claim.

(b) Branch shall not use the terminated inadvertent household error or administrative error claim to offset underpayments.

(c) Branch shall use the terminated intentional program violation claim to offset underpayments. [Eff 3/19/93; am 7/16/99] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(e)(3))

§17-683-51 Change in household composition. The branch shall initiate recovery action against any or all of the adult members of a household at the time an overpayment occurred. Therefore, if a change in household composition occurs, the branch shall pursue recovery action against any household which has a member who was an adult member of the household that received the overpayment. The branch shall offset the amount of the overpayment against the underpayment owed to any household which contains a member who was an adult member of the original household at the time the overpayment. Under no circumstances may the branch collect more than the amount of the claim. In pursuing claims, the branch may use any of the appropriate methods of collecting payments in section 17-683-52. [Eff 3/19/93] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(f))

§17-683-52 Recovery of overpayments. (a) The department shall recover overpayments in one of the methods specified in subsections (b), (c), (d), (e), or (f).

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- (b) The branch shall collect payments from households currently participating in the program by reducing the household's food stamp allotments.
 - (1) If the household requests to make a lump sum cash or food stamp coupon payment or both as full or partial payment of the claim, the department shall accept this method of payment. The department shall reduce the household's allotment to recover any amounts not repaid through a lump sum cash or food stamp coupon payment or both.
 - (2) The branch may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with section 17-683-14.
 - (3) The amount to be recovered each month through allotment reduction shall be determined as follows:
 - (A) For inadvertent household error and administrative error claims, the amount of food stamps shall be the greater of ten per cent of the household's monthly allotment or \$10 a month.
 - (B) For intentional program violation claims, the amount of food stamps shall be the greater of twenty per cent of the household's monthly entitlement or \$10 per month.
- (c) The department shall collect payments from households by withholding amounts from unemployment compensation from a member of the household.
- (d) The department shall collect payments from households by recovering from federal salary or a federal income tax refund.
- (e) The department shall collect payments from households in one lump sum if the household is financially able to pay the overpayment in one lump sum. However, the household shall not be required to liquidate all of its resources to make the repayment.
 - (1) If the household is financially unable to pay the entire amount of the overpayment at one time and prefers to make a lump sum cash payment as partial payment, the department shall accept this method of payment.

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- (2) If the household chooses to make a lump sum payment of food stamp coupons as full or partial payment of the claim, the department shall accept this method of repayment.
- (f) The department shall negotiate a payment schedule with the household for repayment of any amounts of the overpayment not repaid through a lump sum payment. Payments shall be accepted by the department in regular installments. The household may use food stamp coupons as full or partial payment of any installment. The department shall use the full amount of the overpayment to offset benefits in accordance with this chapter.
 - (1) If the household fails to make a payment in accordance with the established repayment schedule (either a lesser amount or no payment), the department shall send the household a notice explaining that no payment or an insufficient payment was received. The notice shall inform the household that unless the overdue payments are made, the allotment of a currently participating household shall be reduced without a notice of adverse action.
 - (2) If the household responds to the notice, makes the overdue payments and wishes to continue payments based on the previous schedule the department shall permit the household to do so. [Eff 3/19/93; am 10/28/96] (Auth: HRS §346-14) (Imp: 7 C.F.R. §273.18(e)(1) (iii), (g)(1) and (2); Pub. L. No. 104-193 (1996))